

In following the history of notice of accident as a condition precedent to right of action, it is seen that while the original intention of the legislature was to protect the municipality or the employer from stale or unjust claims, it soon became evident that the plaintiff also needed help. This was sought to be afforded by certain amendments empowering the Courts to relieve from want or insufficiency of notice in actions where it appeared (a) that there was "reasonable excuse" for the failure to give the prescribed written notice, and (b) that the defendant had not been prejudiced by such failure.

Courts experience some difficulty in determining when the sufficiency of want of notice of accident does not "prejudice" the defendant. But this difficulty wanes to a vanishing point compared with the vexed question of "reasonable excuse."

Again, a knotty question for the Courts is whether the plaintiff, having proved reasonable excuse (whatever that is), still bears the onus of proving no prejudice. The vague nature of "reasonable excuse" leaves it doubtful in many cases whether the term necessarily includes "no prejudice," while in many other cases the dividing line is obvious. The unique severity of the provision requiring notice of accident without a liberal interpretation of "reasonable excuse" is emphasized by Anglin, J., in *O'Connor v. Hamilton* (1904), 9 O.L.R. 391, at 396 as follows: "The legislation in question is so drastic, the limitation imposed, unless a very liberal interpretation be given to the saving provision, is so little short of prohibitive and must so often prove destructive of most meritorious claims, that (speaking for myself) I do not hesitate to say that where there has been no prejudice to the defendants I shall strive to find in the circumstance something, however slight, which may serve as a reasonable excuse."

Meredith, J., dissenting, at pages 399 and 400 intimates that the function of the Court is not one of discretion but strictly to try and adjudicate (like other questions of law and fact in the case) whether there is (a) reasonable excuse, and (b) no prejudice; and he adds that the subject is not one of mere practice, to which the exercise of discretion may be appropriate, but is one of a civil right, to be sustained or lost finally by the judgment upon the question.

The difficulty seems to be that the Courts are loath to apply a too liberal construction to "reasonable excuse" while the law-maker hesitates to define it. The Ontario Supreme Court (Appellate Division) in a unanimous judgment, *Egan v. Saltfleet*, 13 D.L.R. 884, *supra*, delivered by Meredith, C.J.O., addresses the following suggestion to the law-maker: "I cannot refrain from expressing my regret that the legislature has not seen fit to dispense with the necessity of shewing reasonable excuse for the want of notice, I see no reason why the want of it should bar the right to recover where it is shewn that the corporation has not been prejudiced by the notice not having been given within the prescribed time."

The judgment of the Ontario Court of Appeal in *O'Connor v. Hamilton* (1902), 10 O.L.R. 529, went off on another ground, yet that decision, which